Mr. Parambi Lonappen *(Minister for Revenue)*: The Minister for Revenue.

Mr. President: Time?

Mr. Parambi Lonappen (*Minister for Revenue*): At the most, two months.

Motion, put and carried.

10. The Cochin Rubber (Production and Marketing) Bill

Mr. Parambi Lonappen *(Minister for Revenue):* I move that the Cochin Rubber (Production and Marketing) Bill be read in Council.

Rao Bahadur T. K. Nayar *(Prime Minister):* I second it.

*Mr. Parambi Lonappen *(Minister for Revenue):* The Indian Dominion after holding a conference in which all interests of rubber industry in India were represented have decided to set up a statutory organisation to look after the interests of the rubber producers of India. The function of the board constituted under the Act is to advise Government on imports and exports of rubber, promote efficient marketing of Indian Rubber, recommend fair prices, promote research and do such things as may be necessary for the development of Industry. The Government of India have asked this Government to collaborate with them and this Government have agreed. The Bill is on the lines of the one enacted in Travancore.

Mr. P. Govinda Menon *(Ernakulam):* In the conference referred to in the Statements of Objects and Reasons, Sir, was Cochin represented?

Mr. Parambi Lonappen *(Minister for Revenue):* No.

Motion put and carried.

Secretary to the Council: The title of the*Bill is The Cochin Rubber (Production and Marketing) Bill.

Mr. Parambi Lonappen *(Minister for Revenue):* I request that Standing Order 32 may be suspended.

Mr. President: Standing Order 32 is suspended.

Mr. Parambi Lonappen *(Minister for Revenue):* I move that the Bill be taken into consideration.

Mr. M. Sivarama Menon *(Constitutional Adviser):* I second it.

Motion put and carried.

Clauses 2 to 24 put and carried

Clause 1 put and carried

Title and preamble put and carried.

Mr. Parambi Lonappen *(Minister for Revenue):* I move that the Bill may be taken up and finally passed at the next meeting of this Legislative Session.

Motion put and carried.

11. The Cochin Penal Code (Amendment) Bill

Mr. P. Raman Menon *(Advocate-General):* I move that the Cochin Penal Code (Amendment) Bill be read in Council.

Mr. M. Sivarama Menon *(Constitutional Adviser):* I second it.

Mr. P. Govinda Menon *(Ernakulam):* May I request the Government to give us a very clear account in detail about the various provisions proposed in this Bill.

Mr. P. Raman Menon *(Advocate-General):* The immediate provocation for this amendment was the abolition of the capital punishment.

Mr. P. Kumaran Ezhuthassan *(Vadakkanheri):* May I know when that notable event took place? About what year?

Mr. P. Raman Menon *(Advocate-General):* It was in the year 1120.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Much earlier. I know the date. It was the birthday boon of one Maharaja.

Mr. P. Raman Menon *(Advocate-General):* I am told so. I may say that you are wrong and I am right.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* You have given me an incorrect answer and still you are saying that you are right.

---

*Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. P. Raman Menon *(Advocate-General):* Section 46 of the Penal Code falls in the chapter of general explanations. An explanation regarding certain sections are sought to be added as Section 46-A.

The first alteration is in connection with section 46 of the Cochin Penal Code Section 46 of the Penal Cod says thus "Nothing is said to be done or believed in "good faith", which is done or believed without due care and attention". Now an extension to certain other sections is also sought to be added as Section 46A. That is "46A." Except in section 143, and in section 126 in the case in which the husband is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting of a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension." These are all alterations already effected in the Indian Penal Code. So this alteration is only to bring it into line with the Indian Penal Code.

Then there is Clause 3 of the Bill.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Can anything be more added to the printed notes circulated amongst us? We have got notes circulated amongst us, notes on certain clauses.

Mr. P. Raman Menon (*Advocate General*): Nothing can be added. Two Sections which are referred to in Clause 2 are sections 126 and 143. The subject-matter of those two sections is this. Section 143 deals with "Harbouring persons hired for an unlawful assembly." Now the scope of that section is sought to be widened by this alteration. Section 126 deals with "Aiding, escape of, rescuing, or harbouring such prisoner." The following is the change covered by clause 2.

"Except in section 143, and in section 126 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting of a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension." The meaning of the word harbour is extended by this alteration.

With regard to clause 3. After section 49 of the Code, a new section is added as section 49 A. Section 49 reads as follows: "In every case in which a sentence of imprisonment for life shall have been passed, the Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding for ten years. After that section, clause 3 says that a new section will be added as 49 A.

Section 49 A. "Nothing in section 48 or section 49 shall derogate from the right of His Highness the Maharaja to grant pardons, reprieves, respites or remissions of punishment." That is only a Clause added by way of abundant precaution.

In clause A of Section 69 the present Clause A is this:

"Any juvenile offender who abets, commits or attempts to commit.

(*a*) any offence punishable under this Code, except offences specified in Chapter VI and in section 139.A and 485 and offences punishable with death, or." In the case of punishment of juvenile offenders in respect of certain offences a special provision has been made under section 69 (*a*). That is in clause (*a*) of section 69, after the figures and letter "139", the following figures shall be inserted, namely:—281, 285 and 376."

Among those offence 3 more offences are sought to be added. That is 281, 285 and 376, 281 with regard to "Punishment for murder", 285 with regard to "Abetment of suicide of child or insane person" and 376 with regard to "Dacoity with murder". In the case of these 3 offences section 69 says "Any juvenile offender who abets, commits or attempts to commit,

(a) any offence punishable under this Code, except offences specified in Chapter VI and in sections 139 A and 485 and offences punishable with death, or

(b) any offence punishable under any other law with imprisonment, which the Government may, by notification in the Cochin Government Gazette, specify in this behalf,

may be punished with whipping in lieu of any other punishment to which he may for such offence, abetment or attempt be liable." Among those offences 3 more offences are sought to be added that is after the figures and letter "139 A" in clause (a) of section 69, the following

LIBRARY ARCHIVES Kerala Legislative Assembly

figures shall be inserted, namely "281, 285 and 376." So in the case of punishment of humane offenders in respect of certain offenders special provisions have been made and 3 more offences are added, that is "Punishment for murder", "Abetment of suicide of child or insane person" and "Dacoity with murder."

The next change is the most important change. That is Chapter V. It deals with abetment of offences. After Chapter V of the Code, a new Chapter is added that is regarding Criminal Conspiracy. This is corresponding to secton 121 A and B of the Indian Penal Code. The importance of this change is this. As at present stands, conspiracy by itself does not amount to an offence. The meaning of Criminal Conspiracy is a conspiracy to commit an offence by itself without any overt act following it it won't be an offence. Now the change sought to be introduced is this. Such a conspiracy even though not attended with any act following it will amount to an offence and is made punishable. The reason is this. This chargewas introduced in British India as early as 1913. The conspiracy per-se was made an offence. Many an offender though the real offender in the case of an offence escapes on account of the impossibility of proof of overt act. At present it is not enough to prove that a particular person was really at the back of an offence. He might have been behind the whole offence. Unless it is possible to connect him with an over tact directly or indirectly in which he took part in the offence he cannot be convicted of an offence. That is really an unjust thing. With all the injustice the law remains unchanged so far as this State is concerned. The experience shows that dangerous conspiracies are entered into in India which have for their object, aims, other than the commission of offences specified in section 121A and the existing law is inadequate. The present attempt is to bring our Act in line with the Indian Penal Code. In England also this has been the law from the very beginning. In India it is introduced only as early at 1913, and in Cochin State the present attempt is to bring it into line with the Central India Code. That does not mean that this Act is brought for application for Central India alone, but it is only to adopt the same principle and standard here also. The consequences of that amendment will be this. Two sections will be added corresponding to 121A and B of the Indian Penal Code.—115A and B. One is the definition section and the other is the punishment section.

Then with regard to Clause 7 of the Bill. Now we may start with section 126H of the present Code. 126H is as follows: "Whoever abets what he knows to be an act of insubordination by an officer or sepoy in the Cochin Nayar Brigade or Body guard, or by an officer, soldier sailor or airman in the Army, Navy or Air Force of His Majesty, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

After that clause a new clause is sought to be added *viz.*, 126.HH. That is on account of the introduction of the Cochin State Forces.

" 126.HH. No person subject to the Cochin State Forces Proclamation, XIII of 1119, for the time being in force, the Army Act, the Indian Army Act, 1911, the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Indian Air Force Act, 1932, is subject to punishment under this Code for any of the offences defined in this chapter." This is also a copy of the Indian Act, because at the time when the original Act was passed such things were not in existence.

Now the next change is with reference to section 162. 162 reads thus: "Whoever, being legally bound to give any notice or to furnish information or any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;"

That is, one or two omissions in connection with other sections are also introduced. That is, these words are sought to be added in the section: "or if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both." That is in the case of persons convicted for offences with imprisonment or fine and all those things, there is an order also for notifying their residence. If such notification is not made, that itself will be an offence under this provision. So, an amendment is sought to be added to section 162. That is clause 8.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. Raman Menon]

Clause 8. To section 162 of the Code, the following shall be added, namely:

"or if the notice or information required to be given is required by an order passed under sub-section (1) or sub-section (4) of section 458 of the Code of Criminal Procedure, II of 1086, with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.".

Then there is Clause 9 of the Bill. Clause 9 of the Bill seeks to amend section 180 of the Code.

180. of the Code reads thus: "Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code one (or by any other law for the time being in force in Cochin), shall be punished with rigorous imprisonment for a term which may extend to life and shall also be liable to fine;

and if an innocent person be convicted and executed in consequence of such false evidence the person who gives such false evidence shall be punished either with death or the punishment herein before described."

The amendment sought to be added under section 180 of the Code is this:

(*a*) after the word "convicted", the words and figures " of an offence punishable under sections 281, 285, or 376 of this Code, or" shall be inserted; and

(*b*) the second paragraph shall be omitted.

That is section 281 deals with punishment for murder, 285 abetement of suicide of child or insane person and 376 dacoity with murder. These are the offences sought to be added. All that is in accordance with the Indian Act.

Then with regard to clause 10, "section 187 deals with causing disappearance of evidence of an offence committed or giving false information touching it to screen the offence". If the offence is a capital offence, special punishment is made in the section.

Now section 198 deals with " harbouring an offender". The amendment sought to be added by Clause 10 is this:

(*i*) In the second paragraph of sections 187, 198, 199, 200 and 207;

(*ii*) in the third paragraph of sections 202 and 211, and

(*iii*) in section 429 of the Code, after the word "death" the words and figures "or punishable under section '281, 285, or 376" shall be inserted. All these are consequential amendments.

So wherever the word " death" occurs these amendments are necessary.

Then comes Clause 13 of the Bill. At present section 469 has various sub-divisions (*a*), (*b*), (*c*), (*d*). One more is added to that section. Now the amendment sought to be added is this:

"496.E. (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note, shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1) refuses, without lawful excuse, to disclose to a police-officer on being so required the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or on any other document used or distributed in connection with that document, it may, until the contrary is proved, be presumed that that person caused the document to be made".

Under the present circumstances such things will not be an offence. So it has been added in this Act, as in the Indian Act also. All those are offences and who are all will be held liable as offenders under the new section 496 E are given therein.

So all this relates to that offence.

LIBRARY ARCHIVES Kerala Legislative Assembly

Then comes Clause 14 of the Bill. Under Clause 14, for the words "Nayar Brigade" or "Cochin Nayar Brigade" wherever they occur in the Code, the words "Cochin State Forces" shall be substituted. This is the scope of the Bill.

* **Mr. P. Govinda Menon** (*Ernakulam*): Sir, we are in the Legislative Session of this Council and we have already passed almost into law, several pieces of legislation during the course of the last one or two hours. Of late, we have been in this Council, it appears to me, and in making this statement, I do not mean any adverse remarks about anybody. You may take it that it applies mostly to myself. We have been beginning to think that the function of this Legislative Council is to defend a Ministry and to attack it. It would appear that we have no other work apart from mutual recriminations, mutual attacks and mutual fault-findings. And in this attempt we forget the high purpose, the intelligent purpose and the useful purpose of which this Legislative Council has been constituted. According to me, the most important function of the Council is to examine Legislations and to offer useful and intelligent criticisms to legislations that are placed before this House by Government as also by non-official members. The Treasury benches and the non-officials as also the Government, must co-operate, must exhibit a spirit of mutual co-operation to see that this high purpose for which this Legislative Council has been constituted is properly served. We have begun to be complacent about this matter and that complacency is exhibited not alone among official members and non-official members, but everywhere. It would appear that legislation is a simple thing. No explanation or elucidation is required. Most of us here are lay-men and it is wellknown that the applications of legislation are not properly understood by laymen, although they have experienced legislators.In order to help even such people to come to their own conslusions on the Bill placed before them it is usual for Legislative Councils and Parliaments and movers of Bills to do certain things. I must take very strong objection to the way in which this Bill has been placed before this House and with due respect and consideration to the Honble Law-Member the way in which we have taken this very difficult piece of legislation. The statement of objects and reasons is one of the most important explanation adopted by Legislative Councils to make members understand as to what it is that is placed before them. Now the statement of objects and reasons, let me take it, I do not mean anything adverse to anybody.

"Consequent on the abolition of capital punishment for certain offences some of the provisions of the Cochin Penal Code, have to be amended". Now many of us understand a piece of legislation by looking into the statement of objects and reasons. "Consequent on the abolition of capital punishment for certain offences some of the provisions of the Cochin Penal Code, have to be amended. This opportunity is also availed of to effect certain other amendments to these Codes on the lines of some of the recent amendments made to the corresponding enactments in the Indian Dominion. Hence this Bill" I challenge with anybody in this House to tell me whether he has understood the nature of the Bill out of this statement of objects and reasons. It would appear from the statement of objects and reasons that the important changes effected here are changes necessitated by the abolition of capital punishment. But it is clear that it is not so, Out of the 14 clauses of this Bill, 3 clauses and 3 clauses alone, Clauses 9, 10 and 12 alone refer to changes effected by the abolition of the Death Penalty. Clauses 9, 10 and 12 are intended to amend the sections of the Penal Code, wherein death penalty occurs. In order to understand the objects and reasons of other important amendments you are aware we invited to-day. We are, Sir, invited to refer to certain legislation in the Indian Donminion. Where are we to get? We are to get that legislation to understand these amendments. This sort of taking the Legislative Council through these things, I shoul I think, is the most unsatisfactory way—to use a very soft and mild word—I would expect better elucidations and better explanations. The abolition of the death penalty to have necessitated as I have said, three and three clauses alone. Then there are 11 other clauses. These 11 clauses are given in the same Bill only because they are all amendments of the one and the same enactment, of the Indian Penal Code. They cover vitally different subjects. I will first of all refer to clause 2 of the Bill, *i. e.*, to say, the introduction of a new section 46A in the Indian Penal Code. I am not sure whether that section has been copied from the Indian Legislation. Unless I hear more from the Hon'ble Advocate-General, I am not in a position to understand the meaning of that clause. Except in section 143, and 126 in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting,

* Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. Govinda Menon]

of a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension". Now in the Penal Code as it exists to-day the notes on the clauses invite our reference to 202B. It says in sections 200A and 198. The meaning of the word harbour is given here. Harbour includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person in any way to evade apprehension. The expression of the word harbour is used in section 126 and 143. It is considered necessary that the definition contained may be made applicable to all those sections and so it is proposed to transfer it to the general explanations as a consequential amendment. So the section is proposed." Now, Sir, I wish to know the word as explained here applicable to all the sections in the Penal Code. If a wife or husband gives harbour to a person referred to here it will not be an offence. Will it be a case of offence in the case of sections other than sections 126 and 143. What is the intention of Government and why is it that Government wants to make the definition of harbour applicable to all cases. That is a matter that requires some elucidation. Now, Sir, the result of this will be under the existing Code as I said, this definition of the word 'harbour' will be applicable only to 3 offences defined in sections 143, 126, and 126F of the Penal Code. The result of this amendment will be that the word harbour will be applicable to every conceivable offence. That is to say the supply of shelter, the supply of food, the supply of arms and ammunitions or means of conveyance harbouring an offender, whatever be the offence, he has committed. That is to say, if it is found that a person alleged to be guilty of an offence even of criminal conspiracy is given food and drink by anybody, is given shelter by anybody, that person will be guilty of harbouring that offender. Why is it that Government came to the conclusion that the offence of harbouring an offender should be made applicable to a shelter variety of cases that it stands to-day. That is a matter on which we did not hear anything from Government. One of the most important considerations, which must weigh with the legislature which will allow the mover of a Bill is the necessity for that legislation. There may be several important and desirable pieces of legislation, but unless there is a proved necessity, no legislature will be justified in amending the law. The specific question which I have to put to Government is this. What is the proved necessity, what is the necessity that has been felt by Government to give a new definition for the word harbour. Then I come to clause 3 under which a new section, section 49A is intended to be introduced in this Cochin Penal Code. As I said, wherein the necessity for this clause arose has not been explained here. In the note and clauses it is stated that the new section 49A proposed to be introduced is on the lines of section 55A of Indian Penal Code.

The new amendment sought to be added by clause 3 is this.

"Nothing in section 48 or section 49 shall derogate from the right of His Highness the Maharaja to grant pardons, reprieves, respites or remissions of punishment". The only thing placed before is this. In 1937 that is 11 years ago the Indian Legislature enacted a certain section in the Penal Code, that is section 55A—under which the Royal prerogative of granting pardons, reprieves, respites or remissions of punishments is there and therefore in the year 1948 Cochin Government thought that a similar section is required here and what is the section Sir. "Nothing in section 48 or section 49 shall derogate from the right of His Highness the Maharaja to grant pardons, reprieves, respites or remission of punishment". I must say that this is a most unnecessary section. The Cochin Penal Code had been in existence from the year 1059. The Cochin Penal Code was enacted about 60 or 70 years ago. Now what are these sections, 48 and 49 which Government fear will take away certain inherent rights from His Highness the Maharaja. Section 48 reads as follows." In every case in which sentence of death shall have been passed, the Government may without the consent of the offender, commute the punishment for any other punishment provided by this Code. Section 49 is this. "In every case in which sentence of imprisonment for life shall have been passed the Government may without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years." Sir, I want the members of this House to clearly understand the attempt which has been made by this amending section. Sections 48 and 49 of the Cochin Penal Code which, as I said, had been in existence for the last 50 or 60 year conferred a right upon the Government to grant pardons and remissions in appropriate cases. What is the reason to think that if the Ruler of the country had a prerogative right to grant pardons even in spite of these sections, what is the reason, what was the occasion, what was the doubt, in the mind of the Government now, that unless a section is enacted by this legislature, which in the eye of law is only a creature of the Maharaja—unless this Legislature

LIBRARY ARCHIVES Kerala Legislative Assembly

passes a section like this, what is the reason to think that the prerogative right of His Highness the Maharaja will be lost. "Nothing in section 48 or section 49 shall derogate from the right of His Highness the Maharaja to grant pardons, reprieves, respites or remissions of punishment". What a bill is this ! With a statemant of Objects and reasons that because of the abolition of the penalty Act an amendment bill is passed and with the addition that because of a certain enactment in 1937 in the Central Government—therefore also certain amendments are made here. This clause which, really, I must say, is quite a most undefendable proposition. If His Highness the Maharaja has got the prerogative right, soverign right of granting pardons and I believe in constitutional law he has got it, what is the occasion for this Legislative Council coming forward and saying that right shall be there. If, on the other hand, that right has been lost on account of disuse, on account of the fact that it has not been used for generations and decades, have you Sir, come across with a case where any legislature, any parliament, any group of representatives of the people sitting in parliament conferred a right on a constitutional monarch? I must say that Legislatures, and Parliaments in the world over have been progressing from day to day, from generations to generations to get more power, more and more power in the hands of the people, in the hands of the representatives of the people and the attempt everywhere is to reduce or shall I use the word elevate—to elevate the monarchs and rulers from the exalted position to constitutional monarchs and rulers. That is, what has been done by His Highness the Maharaja of Cochin himself who had repeatedly declared that he will be a constitutional monarch and the Government of that Maharaja brings a Bill here, brings a legislation here, an unheard of legislation here, without explaining the reason of that legislation requesting this Legislature to confer certain powers on the Maharaja. After the announcement of His Highness the Maharaja that he will be a Constitutional Monarch, any attempt on the part of the Legislature or of the Government to confer powers on the Maharaja—if the legislature can do that, to exercise powers out of its prerogative rights it is trying to introduce into the politics of this State, into the administration of the State, into the constitutional affairs of this State—dirty politics intrigues and other attempts centering not round the Legislative Council, not round the Government, but round the Maharaja. If the Maharaja is to use his powers—I am referring to these things because of the repeated announcement of His Highness the Maharaja regarding his constitutional powers. Who is the person to tender advice to His Highness the Maharaja. In a country where there is a constitutional Monarch, in a country where the Maharaja has declared that he will be a constitutional Monarch, the system like that, if the prerogative rights are sought to be conferred upon the ruler by the Legislative Council, are you not giving an occasion, are you not creating a situation, are you not creating an opportunity, in which persons other than the Government, persons other than the Ministers, persons other than those who are carrying the administration responsible to this legislature will get opportunities to tender advice to the Maharaja.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri)*: It must be stopped.

Mr. P. Govinda Menon *(Ernakulam)*: Sir, administration will go down, administration will begin to sink, administration will be in stake.....

Mr. President: That will be the consequence of this provision.

Mr. P. Govinda Menon *(Erankulam)*: I am purely on a constitutional topic. Sections 48 and 49 of the Penal Code says that Government have power to grant pardons, reprieves, respites or remissions of punishments in proper cases and according to the Government of Cochin Act and according to the meaning in any constitutional system of Government, Government means and includes the Maharaja, includes the monarch, and therefore those sections 48 and 49 give occasion for the Maharaja to exercise powers, pardons, remissions, reprieves and respites on the advice of Government, on the advice of Ministers what is the meaning I ask of this Government working under such a Maharaja placing a legislation of this type before this House. I put to the Hon'ble members adorning the Treasury benches to-day, had they occasion to look into the constitutional consequences of passing a section like this? The constitutional consequences of passing this amendment of the Indian Penal Code will be for His Highness' Government to go against the declared policies of His Highness. Therefore we must rest content with sections 48 and 49 to summarise once more. My points with respect to my subject are because His Highness the Maharaja is sovereign even when this lagislature declare it, the prerogative right is there; it is there, If on account of non-use of that power, constitutionally it is not there although legally it is there. It is lost. It has become extinct on account of non-use. I must state to this House that it is unheard of in

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. Govinda Menon]

the history of any parliament or legislature to confer such a power upon the Maharaja, and shortly after the announcement of the Maharaja that he is a Constitutional Ruler. In all these matters he will give advice to all these Ministers who are conferring prerogative powers upon the Maharaja is creating an occasion for the Maharaja to act on the advice of persons and not Ministers and who therefore are not responsible to this legislature. On account of these constitutional consequences of section 49A I must most strongly object to the enactment of section 49A in the Penal Code.

Then comes clause 5 which seeks to introduce a new substantive offence called Criminal Conspiracy. It is as if the Legislative Council is in a sleeping mood. It is as if the Legislative Council is not alive to the nature of amendment sought to be effected in the Law of this country, on account of, as I stated, the faulty and the meagre explanations made. We do not understand what the matter is. It was stated by the Hon'ble Advocate-General that in the year 1913, *i.e.*, to say, 35 years ago an amendment was effected in the Indian Penal Code making Criminal Conspiracy as a substantive offence. But now it is felt in 1948, that that substantive clause of conspiracy should be introduced in the Cochin Penal Code. I would have expected that the Prime Minister who is in-charge of Law and Order and who is responsible for the entire administration of this country, because, he is the Prime Minister, to explain to this House, the reasons why he felt that the Cochin Penal Code to-day does not sufficiently or completely define the penal offences of this country. I can understand that when there is an emergency, when there is a situation sometimes emergent, legislation will be required. What was the situation which necessitated the addition of one more substantive offence to the various offences defined in the Penal Code. Let it not be thought for a moment that I am attempting the position that Criminal Conspiracy should not be made an offence. What I am demurring to or objecting to is the way in which new clauses are being created, unless the Government prove, unless the Government admit that there is a situation *i. e.*, Government must say that such and such cases occurred on account of the defect with the Indian Penal Code, on account of the fact that section 55A of the Indian Penal Code do not find a place in the Cochin Penal Code, we were not able to meet a certain situation, we were not able to book a certain offender, we were not in a position, to maintain law and order. I did not hear anything like that from the Hon'ble Prime Minister who ought to have given his explanation for moving this Bill.

Then comes another section, that is to say, section 13 seeking to introduce a new section 469E with respect to documents, resembling currency; whoever makes, or causes to be made or uses for any purpose whatsoever, or delivers to any person, any document purporting to be or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency-note or bank-note, shall be punished with fine which may extend to one hundred rupees". I will not object to, probably many of the clauses here I have no objection. This amending Bill contains several things although the statement of objects and reasons says that this amendment was required because death penalty was abolished. What all things are there in the Bill. I would request the Hon'ble members of the House to consider very liberally and to consider closely the serveral provisions of this Bill and do not allow many of the clauses of the Bill to enter into the Statute book of Cochin. I would, therefore, request that a very serious consideration of the Bill must take place in this House This is all I have to say at this stage of the Bill and as I said I take exception to the way in which the Bill is introduced and I vehemently oppose to clause 3 of the Bill that is section 49A. because it goes against the declared intentions of His Highness the Maharaja of Cochin which is seeking to sabotage the very noble intention of His Highness the Maharaja.

***Mr. P. Kumaran Ezhuthassan** (*Vadakkancheri*): If it is the intention of the Government to stick to the Agenda under item ix that is "the Advocate-General will move for the introduction of the Cochin Code of Criminal Procedure (Amendment) Bill. If the motion is carried and the President is pleased to suspend S. O. 32 the Advocate-General will move that the Bill be taken into consideration". Do they still stick to that or other things. I want to participate in the debate. I put a question and solicit an answer.

Mr. P. Raman Menon (*Advocate-General*): Government do not intend to rush through the business. But at the same time Government want to reply to some of the points raised by the Leader of the Opposition.

---

*Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Mr. President, to many of the observations made by my friend the Hon'ble Leader of the Opposition I am not agreeing but only to a few points. The method of legislation in this House in getting through items of legislation has become something which even a legislature in its infancy could not tolerate. Instances we have to-day, Sir where important bills which ultimately have the effect of taxing the poor people of the State have been got introduced, discussed, passed and even the 3rd reading attempted to be had on a non-official day. That has been, Sir, in spite of the protest registered from time to time showing that this must be given up. I have not been able to see an Agenda in any one of the Legislative meetings printed without this second clause that is "if the motion is carried and the President is pleased to suspend S. O. 32 etc". Why Government put this. According to the nature of the Bill it is the intention of the Government to send it to a Select Committee to examine it if on the first day it is not got through. It will be more useful and that has been forgotten by the Government inclusive of the Government of to-day, inclusive of its predecessor, inclusive of their predecessors, the wooden Government of those days. Nobody can claim credit to have done the right thing in these matters. I am not finding fault with the present Cabinet or its predecessor or its predecessor Government but the fact remains that all have to say Amen to the charge that I have levelled at their doors. With this I agree with my friend. With regard to the way of introducing Bills, especially Bills which affect the Penal Code as was observed and pertinently observed by my friend that even laymen, Sir, will be made to understand why the Bill is brought, what is going to happen, if the Bill is not passed or in other words establish the necessity, the growing necessity for the passing of such a Bill that even a layman must be made to understand why the Bill is brought. And if only a layman reads the books that are put into his hands, his considered opinion will often times be much better than that of a studied lawyer. His study must have spoiled him and the fact that he is in the Legislative House does not permit him, to have his line of thinking. Therefore, Sir, even the layman must be made to understand and the advocate elements in the Legislative Council must be made to understand things in the proper perspective by the elucidation that emanates from the sponsors of the Bill whether it be the premiers of the time or the advocate-generals of the time or anybody-else inclusive of the Constitutional Adviser, a new figure in the Council now. That explanation is necessary and what was it that we had. We had a very closely printed Amendment Bill, and we had an explanatory note. We have the query from the Hon'ble Leader of the Opposition. We have the elucidation of the Advocate-General. Where are we with all these? Are we any better with the notes and the explanations? I submit, Sir, poor me, I cannot say we are better off. There may be defects in me. But I am not prepared to admit so just now. I just place the charge on the other side. Was that point elucidated by my esteemed friend that hereafter the sponsors of the Bill, whether they be Government Bills or non-official Bills they must be pleased to explain the Bill in its perspective with a view to see that the passage of the Bill is made easier, smoother and quicker. In the light of the various observations made by the Hon'ble Members, my considered opinion, Sir, is that some of them could well have been omitted. It would have been more becoming the position of a responsible Leader of a responsible Opposition, if those had not emanated from him. Not that they have no substance, not that they have no reasons behind them—reasons they have in plenty—but they are not of a constitutional or of a legislative nature but other types. And therefore, it is, Sir, some of us would have been happier if they had not been expressed. That is only a personal difference in view. After-all I may be wrong. I wish, I were wrong. And about one particular clause to which my esteemed friend objected, namely that the pererogative right of His Highness to grant pardon being exempted from whatever has been stated in the two preceding clauses, I submit, Sir, that the comment could have been avoided. You need not have courted that comment, the comment that was made in the fashion in which it was made. You could have avoided it by exercising a little of prudence on your part. Where is the necessity for that explanation, Sir? If, as is said, His Highness has got the prerogative under the Constitution Act of Cochin, His Highness has got it. Why should you say that that is not affected by this. It is the reading of those two clauses. Does it connote that the prerogatives, if they exist, are taken away and if that is so, why say that those sections do not take away the prerogative rights. Whether the prerogative right of a ruler becomes extinct by any non-use for a long period of time, is a matter, Sir, which is open to difference of opinion. My esteemed friend takes a special view with these laws. I am at liberty to take a view, perhaps in agreement with him, or even against him. It is not relevant for the present discussion. I therefore do not give it. These general observations

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. Kumaran Ezhuthassan]

made by my Hon'ble friend, the Leader of the Opposition, in exercise of his duty as the Leader of the Opposition, I exhort the Government of the day, or any Government that may come hereafter to respond and to react and hereafter not court such comments from anybody.

***Mr. Paramel Ipe Ipe** *(Kunnamkulam):* Mr. President, Sir, Over and above the objections raised by the Hon'ble Members Mr. P. Govinda Menon and Mr. P. Kumaran Ezhuthassan, I raise my objections regarding section 469 (*e*) Clauses (*i*) (*ii*) and (*iii*). Of course section 469 (*e*) indicates another substantive offence, but clause (*ii*) deals more with the burden of proof regarding the guilt of the person with which section 469 (*e*) has been charged. Now the section is, "If any person whose name bears on a document the making of which is an offence under sub-section (1) refuses without proper excuse to disclose to a police officer on being so required, the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to Rs. 200." Now, supposing that a document has been created by a printer, from somewhere and the name of the person has been imprinted thereon he may be totally innocent of the whole affair. Now the investigating Officer finding the name of that person on the document takes into his head that the enquiries must be made with the person whose name is on that document. The very fact that he is ignorant of the fact about the author of the document makes him liable to an offence under clause (*i*). Even in clause (*iii*) where the name of any person appears on any document in respect of which any person is charged for an offence under sub-section (1) or on any other document, used or distributed in connection with that document it may, until the contrary is proved, be presumed that that person caused the document to be made. It is the fundamental rule that the burden of proof in the case of a criminal prosecution is primarily on the prosecution but we feel that burden has been shifted over to the person who must be presumed to be innocent until the guilt has been proved. So both these clauses (*ii*) and (*iii*), I would humbly submit is most dangerous and it may lead to very serious consequences. So these clauses also cannot find a place in the Statute of Cochin.

Mr. P. Raman Menon *(Advocate-General):* Mr. President, serious charges and very very damaging criticisms have been made against the Government and particularly against the Advocate-General, firstly for introducing such a measure as this which is calculated to curtail the liberty of the subjects and secondly a measure containing so many dangerous provisions and that in a manner calculated to throw the Hon'ble Members of the Council in a confusion regarding the real sense implied in it. I do not claim to have the vast parliamentary experience which the Leader of the Opposition can very legitimately claim, and I do not claim to possess even the theoretical knowledge of how an Advocate-General should behave or even the policy which the Government should adopt in matters like this, especially when they introduce a piece of legislation in the Council. Of course, I do not claim anything like that. In fact, I do plead abundance of inexperience, and consequently abundance of indulgence at the hands of the of the Hon'ble Members.

Mr. P. Govinda Menon *(Ernakulam):* If I have caused any pain to the Hon'ble Member I beg to apologise for that.

Mr. P. Raman Menon *(Advocate-General):* I seem to have given pain to the Hon'ble Member, the Leader of the Opposition and I am wondering in what manner I caused it. That was the inference which I drew from the froth and fury and the appearance of injured innocence which the Hon'ble the Leader of the Opposition put on while commenting on the clause regarding the prerogative rights of the Ruler.

I wish at present to refer to the circumstances under which this Bill was introduced. I was under the impression that at the stage of introducing a Bill, I may be wrong and I am amenable to correction, only the broad features of the Bill need be explained and in fact I was taken by surprise especially in the light of my experience of the Bills previously passed, a few minutes ago. I was taken by surprise by the attitude taken by some of the Hon'ble Members—not pained by the charges that were levelled against me—more than that I did not explain the clauses of the Bill, the phrases of the Bill, the dots of 'I's and 'T's in detail and probably at this stage I was not prepared for that. Not that I did not know it, not that I am not in a position to explain it. Even now I hinted to the Hon'ble Member from Vadakkancheri when he asked me to explain the clause, I said I was fully conscious of the responsibilities

*Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

of the Advocate-General, that that would be waste of time at this stage and when I heard the Hon'ble the Leader of the Opposition commenting in such details upon the various clauses, I thought he was under the impression that this Bill is going to be rushed through to its final stage even to-day without any idea of referring it to a Select Committee. But when I heard him, I thought that he had very serious objection even to the principle of the Bill but towards the end of his speech I heard him saying that he was in agreement with various provisions of this Bill. He warned the Hon'ble Members should take care to consider these points very carefully before Hon'ble Members give their consent to the Bill. That shows that my learned friend on the other side, the Leader of the opposition has absolutely no objection in principle in introduing this Bill. If that is so, it is obvious and it must be much more obvious to the Leader of the Opposition that these were matters within the cognisance of the Select Committee and not for the Advocate-General who is not normally expected to deal in detail with the various clauses of the Bill. At any rate he could have spared me that trouble unless he has something else up his sleeves.

Now even with regard to the various objections I may particularly give some explanation. With regard to clause 46 (A) the Leader of the Opposition was complaining that it was not proper to widen the meaning of the word 'harbour' when used in connection with various offences in the Penal Code, The amendment sought leaves two exceptions, that is to say, in relation to the dealings of a husband towards his wife or a wife towards her husband. Barring that the word 'harbour' is intended to cover all cases of supplying food and so many amenities with a view to helping the offender. Is it the Hon'ble Member's contention-and being an eminent lawyer that he is that such things do not constitute harbouring. At any rate to start with a legislation, is the Government so much at fault in having proposed such a word in the manner in which it has been done. Is it not open to the Hon'ble Member to object to it at the Select Committee stage? If it is fundamentally wrong, then it is the greatest surprise to me and I am afraid rather it is possible to suspect that the Leader of the Opposition has something strongly to say upon the conduct of the Government or the Law Officer, not because he was afraid of the legislation but because he fully knows that he can get it rectified at the Select Committee stage.

Mr. C. S. Panicker *(Adur)* : Is there any proposal for a Select Committee?

Mr. Raman Menon *(Adovcate-General)*: Certainly In the same manner as the Hon'ble Member for Vadakkancheri ascertained, the Hon'ble member could have ascertained it.

Mr. P. Govinda Menon (*Ernakulam*) Sir, I wish very much to know whether the Law Member is in order in attributing motives to me?

Mr. P. Raman Menon (*Adovacate-General*) : I don't say.

Mr. P. Govinda Menon (*Ernakulam*) : You said that I am not very much afraid of the consequences of this legislatior but I wanted to do something injurious to the Law Member.

Mr. P. Raman Menon (*Adovacate-General*) : To say something strongly.

Mr. P. Govinda Menon (*Ernakulam*) : That is attributing motives to me and I wish that he did not do it.

Mr. P. Raman Menon (*Advocate-General*) : It is not attributing motives.

Mr. P. Govinda Menon (*Ernakulam*) : But you meant when you said that I have something up in my sleeves.

Mr. P. Raman Menon (*Advocate-General*) : I meant that you wanted to make some strong statement without absolutely any foundation.

Mr. P. Govinda Menon (*Erdakulam*) : I am surprised that this is your knowledge of things.

Mr. P. Raman Menon (*Adovacate-General*) : I only said that there was absolutely no proper appreciation of the spirit of the subject matter.

Mr. P. Govinda Menon (*Ernakulam*) : And for that you said that the Leader of the Opposition has something up in his sleeves. Wonderful Law Member.

Mr. P. Raman Menon (*Adovacate-General*) : That is, according to the ordinary experience, the Hon'ble the Leader of the Opposition will not speak without a purpose or plan. He is giving expression to ideas and statements using words and exhibiting feelings and they will have a purpose behind them.

Mr. P. Govinda Menon *(Ernakulam)* : And that the Law Member of the Government of Cochin says that the Leader of the Opposition has something in his sleeves. Then I request him to withdraw that statement.

Mr. P. Raman Menon *(Advocate-General)*: You are the best judge. Is the expression unparlimentary ?

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. P. Govinda Menon *(Ernakulam):* It is certainly unparlimentary to question my motives.

Mr. President: The expression is not unparliamentary.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* On the ground that it would have wounded the feelings of the Leader of the Opposition cannot the Advocate-General withdraw that statement?

Mr. P. Raman Menon *(Advocate-General):* I hope I need not make a disquisition on the meaning of the words "Motive", "purpose and opinion" and all that which my friend, the Leader of the Opposition, knows much better than myself.

Mr. P. Govinda Menon *(Ernakulam):* Better not do it and add to the confusion.

Mr. President: Order, the Hon'ble Member will go on with the explanation.

Mr. P. Raman Menon *(Advocate-General):* I submit to the Hon'ble Members of this House that Government have only tried to introduce a piece of law in which the word "harbour" is sought to be defined in a manner which is framed in accordance with human experience. Then the second important matter that the Hon'ble Member, the Leader of the Opposition is objecting to is with regard to the privileges and prerogatives of the Ruler. Even when I referred to that section, I distinctly remember I said that this was introduced only to be there as a matter of extreme prevention. I think I am right in saying that the Hon'ble Member said that this is an attempt to confer powers on the Ruler.

Mr. P. Govinda Menon *(Ernakulam):* Without interruption may I put it straightly, squarely and directly to Government whether it is the intention of the Government that the power vested in Government under sections 48 and 49—that power being there over and above that, is it the intention of the Government that the Maharaja must directly interfere in the administration?

*__Mr. M. Sivarama Menon__ *(Constitutional-Adviser):* Because the question has been put to the Government I wish to add a word upon this point. Now after the enactment of the Government of India Act of 1935, a new section was introduced into the Indian Penal Code and that was found numbered as 55 A. Nothing in sections 54 or 55 shall derogate from the right of His Majesty or the Governor-General to grant a pardon, reprive, respite or remission of punishments. We find that after the passing of the Government of India Act, 1935 in the year 1937 this amendment was introduced in the Indian Penal Code. We also thought that with the growth of responsible Government in Cochin the same provision should be introduced here also. His Highness is exercising this power through the executive authority. So there should be no scope for any misunderstanding of the position occupied by the Constitutional Ruler in the sense that he in law, possesses certain reserve inherent powers. If, as a matter of fact, the attempt of the Government has been by this section to confer any new power upon His Highness, the Maharaja at a time when we are very hastily proceeding in constitutional rule by the introduction of reforms, then I should have very well understood that this is a retrograde measure. Then I would certainly have pleaded guilty to such a charge. But here what is it that has been done. When the existence of a certain state of things is fully realised and when it is recognised, the argument is that with the growth of constitutionalism, such powers should not be exercised and therefore it would seem that they are functus officio. They are all entirely different matters. From recognising the existence of that power what is it that these two sections have attempted to do. We have only tried to incorporate a new section which we find in the Indian Penal Code which was introduced in the year 1937 and for the purpose of satisfying the legal requirements. Though the word used is "Government" in the other section, still it does not in any way prejudice or affect the inherent rights of the Ruler. I hope Hon'ble Members will please see that the wording of this section is only this. "Nothing in section 48 or section 49 shall derogate from the right of His Highness the Maharaja to grant pardons, reprieves, respites, remissions of punishments." This has absolutely nothing to do with the question whether the Maharaja, in exercising the prerogative powers, is entitled to have the words of anybody other than the Ministers. My attempt is only to show that the purpose of the amendment was to remove a cloud which might appear to exist when the word "Government" is used, because His Highness the Maharaja also becomes part and parcel of the Government and there, it is not the prerogative right, but his right as a constitutional ruler that comes into play. There is difference between the inherent right of a ruler and the rights

*Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

invested. They are all different matters. The purpose of the amendment was to follow on the lines of the provision in the Indian Penal Code which was introduced in 1937 by way of recognising the existence of that right and nothing further. It has absolutely no other purpose. His Highness is absolutely innocent of any sort of inference that can be drawn by the conduct of this Government because when the whole Penal Code had to be brought into conformity with the Indian Penal Code for a totally different purpose as well we should have done it long long ago. But the occasion arose when the capital punishment was abolished. And we took a long time to go through all the sections of the Indian Penal Code as well as of the Code of Criminal Procedure. We should have suitably amended this earlier. That is the genesis and the history of this legislation. There has been no attempt to confer any new power on His Highness. No power has been conferred at all. The existence of that right is simply to be recognised by the introduction of this section which runs exactly on the lines of section 55 of the Indian Penal Code.

Hon'ble Members should not be led away by the fact that there has been any other intention on the part of the Government. Far from it. After-all in a constitutional system of Government the advisers of Government whoever may run the Ministry—certainly the persons who are responsible for the Ministry—will have to be guided by the advice of their several officers and there may be really no occasion for a particular attention to be invited, upon a particular issue. Since it was raised here as a particular issue I have explained it to the Hon'ble Members. There was absolutely no intention here excepting to copy down from the Indian Penal Code and in fact I put it in the section while I was the Advocate-General. When even such eminent legislators in India have taken care to recognise this right of the introduction of a new section why not we also do it. The existence of that right is not disputed even now. Therefore the existence of a bare fact is recognised here by the introduction of that section. There is absolutely nothing behind it and you may take it from me that it is only with the sole purpose of bringing our section in conformity with that of the Indian Penal Code.

*Mr. P. Govinda Menon *(Ernakulam)*: May I put one question. Sir, I am extremely thankful to the Constitutional Adviser for elucidating the point without attacking me. I want to put one concrete question. Under sections 48 and 49 suppose a convicted person put a petition before Government and the Minister who may be in charge of the portfolio rejected that prayer for pardon, that is to say he did not tender advice; he tendered advice to the Maharaja that the request may be rejected. Now a provision like this may give an opportunity to a person to request the sovereign to exercise the sovereign's powers over the head of the Minister. Now the learned Constitutional Adviser referred to the amendment of 1937. There is a volune of difference—I am not crossing swords—I am just pointing out another aspect, because the Government of India Act, 1935, did not seek to make His Majesty the King Emperor a constitutional ruler with respect to his reign over India. With respect to that matter he was not a constitutional ruler as contemplated by the Act of 1935 and therefore the existence of a provision like this in the Act of 1935 or in the adaptation referred to in the amendment of 1937 will not be of any force.

Mr. P. Raman Menon *(Advocate-General)*: I certainly say that it is a matter for discussion. That is the very purpose of it being brought here.

Mr. P. Govinda Menon *(Ernakulam)*: Therefore I only meant this. I must again repeat that it is extremely painful that when such criticisms from a constitutional stand-point are being levelled, if responsible members in the treasury benches could stand up and say that the member has something within his sleeves, that the member has some motives, that he wants to discredit the Advocate-General and all that, I must repeat it is extremely painful and after hearing the Constitutional Adviser that the Government are prepared to reconsider this particular position, I have nothing to say about that provision, but I must repeat that in my speech if I did cause any pain to Mr. Raman Menon, the Advocate-General, I unequivocally apologise for it. I didn't mean to make any reflection upon him.

Mr. P. Raman Menon (*Advocate-General*): I have only a few words more to add. In the light of the explanations of the Bill by the Learned Constitutional Adviser I have only to say that it is a contradiction in terms to say that power is sought to be conferred upon the ruler in a matter affecting his prerogatives and privileges. No legislature has got the power to make any legislation regarding the prerogatives of the Ruler. Nobody has any power to touch it. It is superfluous.

*Speech not corrected by the Hon'ble Member.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. President: The Hon'ble Member may conclude.

Mr. P. Raman Menon (*Advocate-General*): With regard to the concluding words I assure him that it has not at all pained me. My fear was that it was the other way and now to know I have not pained him, I am very glad. He need not be under that impression. I am only assuring the Hon'ble Members that this is a matter of legislation. Cold piece of legislation and we have to attack it free from all bias, feelings, etc.

Mr. President: May I put it to the House?

(Cries of 'No')

Mr. P. K. Dewer (*Nominated*): May be put at the next meeting.

Mr. President: Order, order, what is the suggestion?

Rao Bahadur T. K. Nayar (*Prime Minister*): Whenever it is convenient at any session.

The House rose for the day at 5-30 p.m.

N. I. OUSEPH
Secretary to the Council

LIBRARY ARCHIVES Kerala Legislative Assembly

24. *Temporary Powers of Government.* Until such time as the Board is notified under section 2 (*a*) Government may, notwithstanding anything hereinbefore contained,—

(*a*) exercise any of the powers conferred by this Act upon the Board;

(*b*) exercise any of the powers conferred by section 6 or section 8 on Governmen without consulting the Board, or as the case may be, the Rubber Price Advisory Committee.

Statement of Objects and Reasons

In pursuance of the recommendation made by a conference representing all interests of Rubber Industry, Government of India have enacted the Rubber (Production and Marketing) Act, 1947, and have set up a statutory organisation to look after the interests of the rubber producers in India. The Board constituted under the Act is to advise Government on imports and exports of rubber, promote efficient marketing of Indian rubber, recommend fair prices, promote research and in short, do all such things as may be necessary for the development of the Rubber Industry.

It is necessary to collaborate with the Government of India in the scheme and the Bill is intended th make provision for similar matters and is on the lines of the enactment in force in Travancore.

APPENDIX X (*a*)

THE COCHIN PENAL CODE (AMENDMENT) BILL

Preamble.—WHEREAS it is necessary further to amend the Cochin Penal Code, I of 1059; It is hereby enacted as follows:—

1. *Short title and commencement.*—This Act may be called the Ccohin Penal Code (Amendment) Act of 112 , and it shall come into force at once.

2. *Insertion of a new section 46A.*—After section 46 of the Cochin Penal Code, I of 1059, hereinafter referred to as the Code, the following shall be inserted as section 46A, namely:—

"46A. *Harbour.*—Except in section 143, and in section 126 in the case in which the harbour is given by the wife or husband of the person harboured, the word "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting of a person by any means, whether of the same kind as those enumerated in this section or not, to evade apprehension."

3. *Insertion of a new section 49A.*—After section 49 of the Code, the following section shall be inserted, namely:—

"49A. *Saving of His Highness' prerogative.*—Nothing in section 48 or secton 49 shall derogate from the right of His Highness the Maharaja to grant pardons, reprieves, respites or remissions of punishment."

4. *Amendment of section 69.*—In clause (*a*) of section 69, after the figures and letter "139A", the following figures shall be inserted, namely:—

"281, 285, 376".

5. *Insertion of a new Chapter VA.*—After Chapter V of the Code, the following new Chapter shall be inserted, namely:—

"CHAPTER VA

CRIMINAL CONSPIRACY

115A. *Definition of criminal conspiracy.*—When two or more persons agree to do or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;

LIBRARY ARCHIVES Kerala Legislative Assembly

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely accidental to that object.

115B. *Punishment of criminal conspiracy.*—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid, shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both".

6. In the explanation to section 126A of the Code, between the words "the Air Force Act" and "as the case may be", the words and figure "or the Indian Air Forces Act, 1932", shall be inserted.

7. *Insertion of a new section 126HH.*—After section 126H of the Code, the following section shall be inserted, namely:—

"126HH. No person subject to the Cochin State Forces Proclamation, XIII of 1119, for the time being in force, the Army Act, the Indian Army Act, 1911, the Naval Discipline Act or that Act as modified by the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Indian Air Force Act, 1932, is subject to punishment under this Code for any of the offences defined in this chapter."

8. *Amendment of section 162.*—To section 162 of the Code, the following shall be added, namely:—

"or, if the notice or information required to be given is required by an order passed under sub-section (1) or sub-section (4) of section 458 of the Code of Criminal Procedure, II of 1086, with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both."

9. *Amendment of section 180.*—In section 180 of the Code—

(*a*) after the word "convicted", the words and figures "of an offence punishable under sections 281, 285 or 376 of this Code, or" shall be inserted; and

(*b*) the second paragraph shall be omitted.

10. *Amendment of sections 187, 198, 199, 200, 202, 207 and 211.*—

(*i*) In the second paragraph of sections 187, 198, 199, 200 and 207,

(*ii*) in the third paragraph of sections 202 and 211, and

(*iii*) in section 429 of the Code, after the word "death", the words and figures "or punishable under sections 281, 285 or 376" shall be inserted.

11. *Deletion of section 202B.*—Section 202 B of the Code shall be omitted.

12. *Amendment of sections 281, 285 and 376.*—In sections 281, 285 and 376 of the Code the words "death, or" shall be omitted.

13. *Insertion of a new section 469E.*—After section 469 D of the Code, the following section shall be inserted, namely:—

Making or using documents resembling currency notes or bank-notes.—"469 E. (1) Whoever makes, or causes to be made, or uses for any purpose whatsoever, or delivers to any person, any document purporting to be, or in any way resembling, or so nearly resembling as to be calculated to deceive, any currency note or bank note, shall be punished with fine which may extend to one hundred rupees.

(2) If any person, whose name appears on a document the making of which is an offence under sub-section (1) refuses, without lawful excuse, to disclose to a police officer on being so required, the name and address of the person by whom it was printed or otherwise made, he shall be punished with fine which may extend to two hundred rupees.

(3) Where the name of any person appears on any document in respect of which any person is charged with an offence under sub-section (1) or any other document used or distributed in connection with that document, it may, until the contrary is proved, be presumed that that person caused the document to be made".

LIBRARY ARCHIVES Kerala Legislative Assembly

14. *Substitution of "Cochin State Forces" for "Cochin Nayar Brigade".*—For the words "Nayar Brigade" or "Cochin Nayar Brigade" wherever they occur in the Code the words "Cochin State Forces" shall be substituted.

Statement of Objects and Reasons

Consequent on the abolition of capital punishment for certain offences some of the provisions of the Cochin Penal Code have to be amended. This opportunity it also availed of to effect certain other amendments to these Codes on the lines of some of the recent amendments made to the corresponding enactments in the Indian Dominion. Hence the Bill.

APPENDIX X (b)

NOTES ON CLAUSES

The Cochin Penal Code (Amendment) Bill

Clause 1.—Self-explanatory.

Clause 2.—Section 202 B as it now stands gives a wide meaning for the term "harbour' occurring in sections 198, 202 and 202 A. The expression 'harbour' is also used in sections 126, 126 F and 143. It is considered necessary that the definition contained in section 202 B may be made applicable to all these sections and so it is proposed to transfer it to the chapter of General Explanations. As a consequential amendment section 202 B is propsed to be deleted.

Clause 3.—The new section 49 A proposed to be introduced is on the lines of section 55 A of the Indian Penal Code introduced by the Indian Laws Adaptation Order, 1937 for saving the Royal Prerogative for the grant of pardons, remissions of punishments, etc.

Clause 4 is consequential to the abolition of the sentence of death by Proclamation, VIII of 1120.

Clause 5.—This clause seeks to introduce a new chapter on criminal conspiracy on the lines of Chapter VA of the Indian Penal Code. The Chapter makes criminal conspiracy a substantive offence.

Clause 6 is intended only to supply an omission in section 126 A.

Clause 7.—Section 139 of the Indian Penal Code provides that persons subject to Military Law will not be dealt with under that Code for offences relating to the Army, Navy and Air Forces. This Clause seeks to introduce a similar provision in the Cochin Penal Code.

Clause 8.—Section 162 of the Code deals with the offences of omission to give notice or information to public servants by a person legally bound to give notice or information. Under sub-section (1) of section 458 of the Code of Criminal Procedure a Court may order a previously convicted offender to notify his address. It is proposed to amend section 162 so that failure to notify under sub-section (1) of section 458 shall be an offence punishable under section 162.

Clauses 9 and 10 are consequential to the abolition of death sentence.

Clause 11 is consequential to the amendment proposed in Clause 3.

Clause 12 is consequential to the abolition of death sentence.

Clause 13.—Sections 469 A to 469 D of the Code deal with offences relating to currency notes and bank notes. These sections do not contain a provision under which the making or using documents resembling currency notes or bank notes is an offence. It is therefore proposed to introduce a new section 469 E which penalises the making or using for any purpose whatsoever any document purporting to be or in any way resembling or so nearly resembling as to be calculated to receive any currency note or bank note.

Clause 15 is consequential to the reconstitution of the Nayar Brigade as the Cochin State Forces.

LIBRARY ARCHIVES Kerala Legislative Assembly